

## The complaint

Mr B complains Debt Managers (Services) Limited (DMSL) has wrongly reported the date of a default to credit reference agencies (CRA's). He asks for the default date to be backdated.

## What happened

Mr B held an account with a third-party company I'll call company "S". The account fell into arrears and it served a default notice on 7 February 2018.

In March 2019, Company "S" wrote to Mr B to explain it was in the process of allocating his account to an external debt collection agency.

On 1 May 2019, the account was assigned to DMSL. It updated the information on Mr B's credit file to show it was now the legal owner of the debt and responsible for future reporting. The default date on the credit file shows as 25 March 2019.

Mr B is unhappy that the default date hasn't been recorded within 21 days of the date the default notice was served. He has also noted that different credit reference agencies hold different information about this account.

Mr B doesn't agree that DMSL can legitimately purchase an account that Company "S" failed to default correctly in line with his understanding of the relevant legislation. He believes this is an attempt to frustrate the six-year rule, and so he complained to DMSL. In its final response dated 22 July 2019, DMSL explained it purchased the account in good faith from Company "S" on 1 May 2019. It points out the original account was defaulted by Company "S" on 25 March 2019. It reported the change in legal ownership, as its required to do and from the date it acquired the account, it will take over responsibility for updating Mr B's credit file on a monthly basis. It explained this was to ensure transparency to all creditors and to ensure Mr B's credit file remains accurate and up to date. It said it had complied with all relevant policies and procedures and didn't uphold his complaint.

Mr B remained dissatisfied and brought his complaint to this service. An investigator looked into things for Mr B. She found that DMSL had legitimately purchased the account from Company "S" and found no evidence of a regulatory breach. She explained that as Company "S" had already defaulted the account prior to selling it to DMSL, it wasn't possible to default it again and DMSL were not able to amend the default date as it hadn't registered it in the first place. She found DMSL had correctly notified the CRA's of the new legal ownership and has reassured Mr B, it didn't intend to take any legal action or put Mr B under any further financial strain and would work with him to reach a satisfactory payment arrangement. In her view, DMSL, had acted fairly and reasonably and so she didn't ask it to do anything further.

Mr B disagreed. He points out the default notice was issued on 7 February 2018, but the default was only reported to credit reference agencies on 25 March 2019, which is some 13 months later. He says it should have been reported within 21 days and as such he wants the default backdated and compensation for the trouble and upset this matter has caused. He asked for an ombudsman review.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm in agreement with the investigators view. I understand this will come as a disappointment to Mr B, I'll explain why.

Firstly, I appreciate Mr B has been waiting sometime for a decision for and I thank him for his patience. It's important to gather all the relevant information regarding a complaint and this can take some time. I'd like to reassure Mr B, I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point, it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

I'm also aware that Mr B has raised concerns about Company "S" and the credit reference agencies. In this decision I am only looking at the actions of DMSL and whether it has acted fairly and reasonably in its debt collecting activities although I may refer to Company "S" for the purpose of context.

The Consumer Credit Act (CCA 1974) explains what actions can be taken after a creditor has served a default notice, it says:

*'Service of a notice on the debtor or hirer in accordance with section 88 (a "default notice") is necessary before the creditor or owner can become entitled, by reason of any breach by the debtor or hirer of a regulated agreement, —*

*(a) to terminate the agreement, or  
(b) to demand earlier payment of any sum, or  
(c) to recover possession of any goods or land, or  
(d) to treat any right conferred on the debtor or hirer by the agreement as terminated, restricted or deferred, or  
(e) to enforce any security.'*

The legislation requires a creditor to have served notice of a default rather than defaulted the account before a debt can be sold or assigned to a third party. In this case, the default notice was served on 7 February 2018 by Company "S". It wrote again to Mr B on 9 March 2019 to explain his account was in the process of being allocated to an external debt collection agency. It reported a default on the account to CRA's on 25 March 2019 and assigned the debt to DMSL on 1 May 2019.

As the notice of default had been served before the debt was assigned to DMSL I'm satisfied it was met the legal requirements and DMSL has legitimately purchased the debt. When DMSL purchased the debt, it took over legal ownership and as such was required to comply with the relevant legislation.

The information commissioner's office (ICO) has issued "principles for the reporting of arrears, arrangements and defaults at credit reference agencies" which gives lenders guidance on what to do in such situations. The first principle is that data reported on a credit file "must be fair, accurate, consistent, complete and up to date", and further that "should your account be sold or referred to another lending organisation or a debt collection agency, the records provided .... must still be accurate and up to date".

Company "S" had already reported a default date to the CRA's before DMSL purchased the debt. Its responsibility is for payments and reporting fair, accurate and up to date information from the date it purchased the debt, in this case, 1 May 2019. So, it's not within DMSL's remit to make any alteration to a default date reported.

I can see Mr B contends the date of the default should have been earlier than actual date it was reported, but this is a matter for Company "S" and as I understand it, he has raised a complaint directly with them. I can't fairly hold DMSL responsible for information reported by another company and before it purchased the debt.

As the account has been sold to DMSL as a defaulted account, it can't default again. I'm aware DMSL have agreed to look at Mr B's financial circumstances to try and come to a payment arrangement, and I'd expect them to be sympathetic in their approach but I'm not going to ask them to do anything further regarding this complaint.

### **My final decision**

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2020.

Wendy Steele  
**Ombudsman**